HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

AN AMERICAN REPRINT. — Sir Frederick Pollock desires the REVIEW to state that a new and *fourth* edition of his book on Torts is now in press, and that the American reprint called Webb's Pollock on Torts (noticed in the November number of the REVIEW, p. 186), which is taken from the *third* English edition, has been issued without any kind of authority or consent either from the English publishers or from himself.

COMPARATIVE NEGLIGENCE. — On the question of contributory negligence, there has always been considerable dissension. Besides the orthodox common-law principle, prevailing in England and most of the States, and the rough and ready rule of the admiralty courts, there were several local idiosyncrasies, the most important of which was the doctrine of comparative negligence. This anomalous theory, first laid down by Breese, J., in *Galena, &c. R. R. Co.* v. *Jacobs*, 20 Ill. 478, 496, although founded on a misunderstanding of the law (Thompson on Negligence, 1169, note), was reiterated in so many cases that it became regarded as the settled law of Illinois (Beach on Contributory Negligence, second edition, 107), and though severely criticised and in some degree explained away (Cooley on Torts, second edition, 815), gained a foothold in Georgia, Kansas, Tennessee, and possibly elsewhere. (Beach, 103.)

This doctrine is now, however, on the wane, and, like other attitudes inconsistent with the progress of the common law toward assimilation, is being repudiated in the very jurisdiction in which it first took rise. Such, at least, would appear to be the significance of the statement by Bailey, J., in *North Chicago St. R. Co.* v. *Eldridge*, 38 N. E. R. 246, at 247, 150 Ill. St. In that case, one of contributory negligence, an instruction was asked for, to the effect that if the jury believed from the evidence in the case that the negligence of the plaintiff and defendant was equal or nearly so, then, in such case, their verdict should be for the defendant.

This instruction was rejected by the lower court, and on exceptions to this ruling, the upper court said: "The proposition embodied in this instruction doubtless finds support in some of the earlier decisions of this court, involving what was known as the doctrine of comparative negligence; but by more recent decisions that doctrine has been greatly modified, if not wholly repudiated."

This statement is unfortunately weakened, since the court rests its decision on another ground, — that the instruction asked for was quite unnecessary, as the law had already been laid down with sufficient accuracy and fulness. It is, therefore, somewhat hard to decide the exact weight of the case, or to conjecture what results will flow from it. At all events, it shows a tendency in the right direction.

CONVERSION BY BAILEE. — *Doolittle* v. *Shaw*, 60 N. W. R. 621 (Iowa), was one of the familiar cases of violation of a bailment for hire by driving the horse hired beyond the place designated. The distinction taken by the court was that, as the injury to the horse was occasioned by no gross negligence or wilful abuse, no conversion took place, and that such had been the doctrine of *all* the cases.

It is submitted that this rests upon a misapprehension of the action of conversion, the gist of which lies in the interference with the plaintiff's possession or right to it, amounting to a complete denial for an appreciable time. The court is right in saying that not every intermeddling is a conversion, nor indeed every intermeddling contrary to the terms of the bailment. There must be some act which can be interpreted as a total deprivation of the plaintiff's possession or right to it, not consented to by him. In a bailment for a specific purpose the bailor consents to lose possession of the chattel under the conditions of the contract; but the general right to its possession subject to that exception clearly remains unimpaired, and any act interrupting wholly the right to possession except within those limits is as much a conversion as if there had been no bailment at all. Doubtless this application of conversion usually comes up when there has been some abuse of the chattel, as it is not ordinarily injured without that; but the conversion rests on grounds quite other than that of negligence or abuse. *Wentworth* v. *McDuffie*, 48 N. H. 402. It is altogether too strong, then, to say that this Iowa case follows the doctrine of "all the cases." But the action for conversion, being as it is a means of forcing title upon the converter against his will, it is most desirable that some way of limiting it should be worked out for use in cases where in justice the plaintiff is not entitled to elect title into the defendant. Such a case as this is a step away from a technical rule which enables a bailor to throw the peril of accident upon his bailee, and as such, a step in the right direction.

DEVELOPMENT OF THE LAW OF PRIVACY. — One or two bits of news in the law of privacy may be given. The well-known English case of *Prince Albert* v. *Strange* has been followed in *W. S. Gilbert* v. *The Star Newspaper*, 11 *The Times* Law Reports, 4, where Mr. Gilbert got an injunction against the disclosure of the "gags" and the plot of "His Excellency" before the public performance of that comedy. An article, "The Right to Privacy," by Mr. Herbert Spencer Hadley, appeared in the October number